3-30-1998

Nota Bene, March 30, 1998

ATON ENEB

Super-agent, GW Alum, David Falk Announced Dean of Law School:

Profs land endorsement deals

By Robert Zimmerman
Special to the Nota Bene

In a surprise selection, the Dean Search Committee announced that super sports agent and distinguished GWULS Alum, David Falk would succeed Dean Jack Friedenthal as the new dean of the law school.

Asked for an explanation for this unconventional choice, Dean Search Committee Chair Roger Schechter noted that "one factor was that outstanding Nota Bene editorial, it really opened our eyes. You may think we don't pay attention to that rag, but believe me, what they had to say on this issue was of great concern to me and the other members of the committee." Added fellow committee member, Charles Craver, "We were very impressed with Mr. Falk's negotiating skills, which will be essential for the inevitable tensions that exist between the University and the Law School."

Mr. Falk seemed elated with his selection, "With Michael (Jordan) contemplating retirement, its time for me to find a new world to conquer." While all the terms of the deal are not known, the law school will allow Mr. Falk to retain all his clients after assuming the position of Dean. "Basically, Trangsrud, Jenkins and Robinson do the heavy lifting, so there won't be that great a change with Falk assuming this position," Schechter explained.

In an effort to raise the school's profile, Falk announced an initiative to land GW professors big time endorsement deals. Falk vowed to make GW "the Michael Jordan of law schools."

For starters, Prof. Schechter will appear on the Wheaties cereal box which will endorse GWULS as the "Law school of Champions." Asked if being Chairman of Dean Search Committee had anything to do with his selection for that coveted endorsement, Falk steadfastly denied the suggestion, "In his own way, Roger Schechter has left such an impact on the world of intellectual property statutory compilations that could only be described as 'Jordanesque.'" For his part, Prof. Schechter was delighted to have such an opportunity. "Growing up I always dreamed I'd be on the Wheaties box. Of course, I thought my somewhat limited physical abilities would stop this dream from ever being realized. Only in America could a unathletic schlub such as myself appear on the Wheaties box in a celebration of my legal prowess."

Speaking of his Airness, Falk also announced that Jordan Inc. will name Prof. Paul Butler spokesman for their new line of Air Wingtips. "We even have a slogan," Falk quipped, "Air Wingtips: Just Don't Wing It." When asked if Butler would make a suitable spokesman given his controversial writings on jury nullification, Falk replied "I like Butler, he reminds me of Coach Thompson, imposing, yet adored. Besides, we already had to change our original slogan. Air Wingtips: Will Set You Free."

Photo courtesy of F.A.M.E. Dewey Register Copyright 1995

New Dean David Falk has big plans for GW professors

Falk also has big plans for Prof. Charles Craver, "We've been talking to Warner Brothers and they were so pleased with 'Space Jam', they'd like to do a sequel with a group of all star law professors." Falk beamed, "After all, what fourth grader wouldn't love to see Bugs Bunny match wits against some of the most brilliant legal minds in the country!" Prof. Craver was positively giddy at the notion, "I've negotiated with some pretty irrational people, but Daffy Duck should be quite a challenge, he's not even a person!" Craver's dream team includes Professors Cheh, Saltzburg, and Raven-Hansen. "It's something of a consolation prize for not getting the position of Dean," Craver admitted.

See Dean Falk pg 2

1L Writing Competitions Lost:

Journals Rally to Remedy Mishap

by Ivanna Jobb

In a joint statement to Dean Friedenthal last week, all five journals have submitted a letter stating that three of the seven boxes containing this year's 1L journal competitions have been lost. The discovery was made by an editor of the International Law Journal, who was going to pick up the competitions for early evaluation.

The five journals rotate the boxes of competitions, as each one is evaluated fresh by every journal. No one has made a definitive statement regarding when the three lost boxes were last seen. It is clear, however, that none of the competitions in the lost boxes have been graded by any journal. This means that the boxes must have been lost very shortly after the competitions were collected.

"This is not a time to panic," cautioned Dean Friedenthal. "This Law School has evaluated students without the use of their actual work in the past, so we are well equipped to handle the situation." The Dean suggested several ways to remedy the situation in the event that the competitions are not found. "Some sort of lottery system could be employed for those students who did not make a journal due to their competition's being misplaced" he suggested. "Or the journals could structure a summer work-on program for those students."

The Law Review may decide not to evaluate any of the competitions, and instead, invite members based solely on grades. Similarly, the AIPLA Journal suggested that they could choose their members from the bottom of the class up, thereby making the composition of the journal nearly identical to its current standings.

"This makes doing well on finals 100 times more important," said an editor of the Environmental Law Journal. "I suggest that every 1L do absolutely nothing but study for the next month. I mean, your entire life essentially boils down to one question: are you on a journal?" An editor of the Government Contracts Journal agreed, stating "I couldn't even get a date before I was on a journal. Now, two years later, I'm engaged to a Russian model."

Trachtenberg's Vision for 'Law School 2000' Becomes Reality:

Law School to Relocate to 2000 Penn in Year 2000

by Nota Bene Staff

In a public address from the verandah of his eight floor office suite last week, President Stephen Joel Trachtenberg called out to the clamoring multitudes that "he had a vision." "Gather round all of you and let me tell what I've learned about education: bigger is better!" The Pres. intoned.

"Only nudniks shrink things," he railed. "The Law School's gotta grow, grow, grow. Bagels for all! Parking? No problem -- the women's college has tons of it. I'm no Buck Rogers, but I'm the captain of this convoy!"

SJT proceeded to unveil an elaborate plan to make GW's Law School the "litigation leader of the new millennium." After evicting all the commercial tenants from 2000 Penn., he explained, the building would be converted in the year 2000 into the nation's largest and most temperature controlled law school.

Trachtenberg estimated that the building will comfortably hold 11,000 students, but he noted that with some "visionary remodeling" another 1,000 students could be eased in.

Asked how he could justify the loss of commercial revenues from the outgoing tenants, Trachtenberg scoffed, "I'm no Yosemite Sam -- I've done the math, and the profit margin on our superior law students makes our commercial tenants look like write-offs. You sure are pretty."

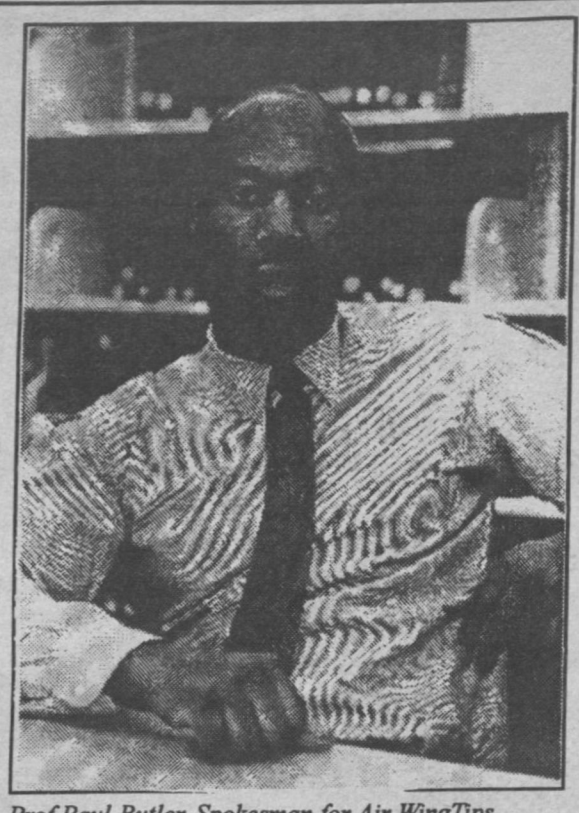
Tenants at 2000 Penn. said they were disappointed, but understood the President's plan. "It's not hard to see that as a nation, we need to be training a lot more lawyers," said Lindy, of Lindy's Lion.

Dean Falk from pg 1

The Law Revue has already rewritten R. Kelley's hit song "I Believe I Can Fly," as "I Believe I Can Brief," for the upcoming sequel tentatively titled "Space Jam II: Court's In Session." Falk noted, "Although the Law Revue has extended the song four times its original length, we think that fifth extra verse will help drive home their biting humor."

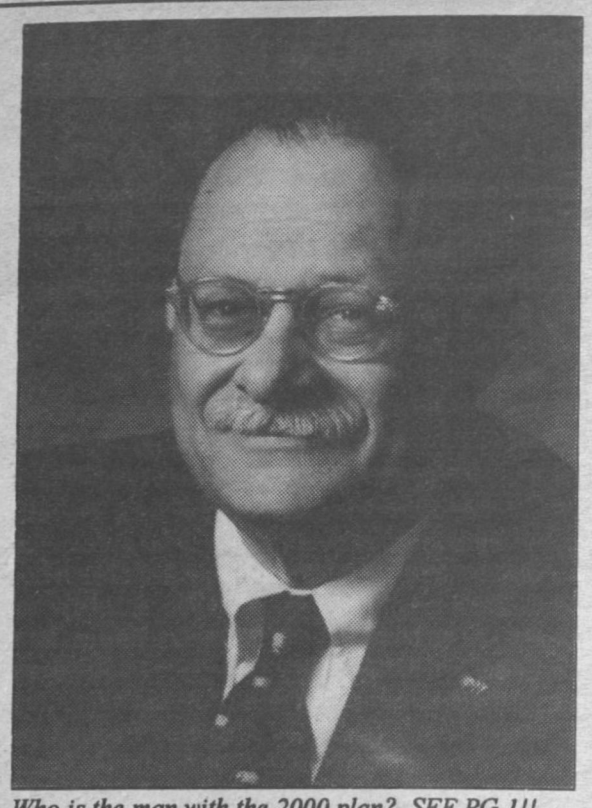
Asked about University President Stephen Joel Trachtenberg, Dean Falk questioned the judgment of a man who would strike an endorsement deal with Pepsi. "Coke is the leader, we will not be considered a first rate law school or university until we associate ourselves with the No.1 soft drink company." He added, "I really don't get that River Horse thing either. I mean we're supposed to be the GW Colonials, right?" When told of the tuition revenue sharing plan between the law school and the university, Falk was incredulous, "Is he really taking over thirty five percent? That's greedy even by a sports agent's standard!"

Falk also outlined a plan for bring more high profile professors to the law school, including a few surprise choices. "Of course MJ's going to have some free time after retiring from the NBA. I'd like to co-teach a course in Advanced Contract Negotiations with him. Professor Jordan. . .you know I think he'd like that a lot. He's always been a tad envious of Julius Erving's doctorate."



Prof Paul Butler, Spokesman for Air WingTips

Mr. Falk had a few questions of his own. "So, when do I get to start sitting on a professional sports salary arbitration panel? Friedenthal told me that was the coolest part about being Dean of this school."



Who is the man with the 2000 plan? SEE PG 1!!

Jackass Admitted To Law Review Under New *Diversity Policy*

By Mr. Ed

Producing a result some described as "baffling," while others chalked it up as "business as usual," the Law Review admitted Jerry the Jackass to their prestigious journal under their new diversity policy.

While the details of the new policy are not yet known at this time, several editors and associates seemed pleased with Jerry's admission. "Jerry brings a new voice to the Law Review. Sure, that voice usually neighs and snorts, but that's the new way of thinking that this journal needs," said one editor who wished to remain nameless. "I think he'll fit right in," said Editor-in-Chief, Jeff Wadsworth.

Jerry the Jackass

That may be precisely the problem critics argue. "I don't think Jerry brings any diversity at all. There are plenty of jackasses on the Law Review already. Maybe they're not the majority, but the jackass viewpoint has been well represented." said member, Jeff Pearlman.

Still others seemed concerned with the logistics of having Jerry around. "How's he going to squeeze into that skinny stairwell?" asked Jon Krell.

NOTA BENE

Associate Dean Roger Transgrud Enters Race for Law School Deanship

by Nota Bene Staff

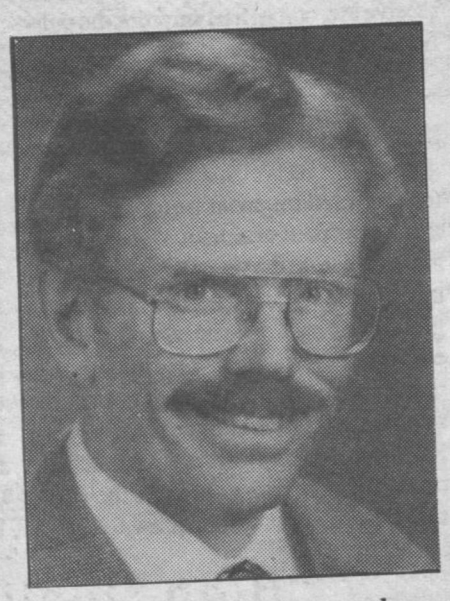
Associate Dean Roger Transgrud joined the field of contenders for the deanship this month. Already familiar to students as Dean Friedenthal's right-hand man on the Law School administration, Assoc. Dean Transgrud faces stiff competition from a number of external candidates, and from three other candidates within the Law School.

The Dean Search Committee is jealously guarding the names of the external candidates, citing concerns that premature disclosure could result in their withdrawal from the race.

The internal candidates are all known to the law School community already. Along with Assoc. Dean Transgrud, they are Profs. Cheh, Raven-Hansen, and Saltzburg.

All of the candidates have visited, or will soon visit, the Law School for interviews with various constituencies, including the faculty, the Student Dean Search Committee, alumni and the University administration. The Faculty Dean Search Committee plans to present a final slate of candidates for the faculty to vote upon sometime this month.

President Stephen Joel Trachtenberg has requested that the faculty provide him a list of three candidates from which to choose Dean Friedenthal's successor.



Associate Dean Roger Transgrud

Associate Dean Transgrud joined the Law School in '82, after clerking for the Minnesota Supreme Court and working for Hogan & Hartson in DC. Dean Friedenthal appointed him Associate Dean in '93; he has taught civil procedure, federal jurisdiction, remedies, and complex litigation. He earned his B.A. from Carlton College, and his J.D. from Chicago.

Law Review Diversity Amendment Quashed

by H. Otis Bilodeau
Editor-in-Chief

The Law Review membership voted decisively before spring break to reject an initiative designed to revise the publication's policy on selecting members on the basis of diversity.

The proposed policy, presented to members in the form of an amendment to the journal's constitution, required a two-thirds majority vote in favor to pass. An early count of members' votes revealed the propsed amendment could not pass, according to a memo from editor-in-chief, Bryan Corbett.

The proposed amendment called primarily for procedural changes to the existing diversity policy. Members of the Diversity Committee that drafted the amendment defended it on the grounds that it would permit the goals of diversity selection to be met more effectively. Diversity Committee members noted that, under the existing policy, only one candidate was selected last year; as it turned out, that candidate would have been selected anyway on the basis of his or her grades and writing competition.

Only two of the Law Review's 118 student members are African Americans. No African-American student was selected for membership last year.

Critics of the proposed amendment objected to the fact that it vested control of much of the diversity selection process in a small committee of regular members and editors. Under the current policy, the entire editorial board considers diversity candidates.

At a meeting of the entire Law Review membership held prior to the vote on the proposed amendment, numerous students sharply challenged the amendment itself, and questioned the merits of diversity selection generally, according to members in attendance. While most students focused on the procedures contained in the amendment, *some spoke out in defense of the regular admissions* process, which they said appropriately emphasized objective measures of merit.

Brian Corbett

Members of the Diversity Committee, who argued at the meeting in favor of the proposed amendment, contended that the purpose of a diversity selection policy is to ensure that membership selection involve measures of merit other grades and writing scores.

Faculty Votes to Provide Students Notice of Military Employers' Discriminatory Policies

by H. Otis Bilodeau
Editor-in-Chief

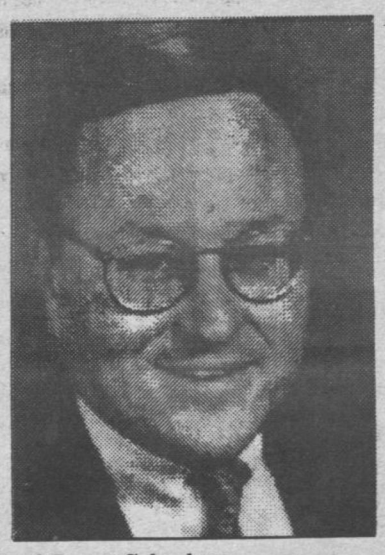
The faculty voted before spring break to include among materials provided to students from the CDO a statement singling out the military as an employer that "discriminates against gay, lesbian and bisexual persons."

The armed forces actively recruit at the Law School. The new statement notifies students that the military is permitted, by law, to discriminate against gays, lesbians and bisexuals. The statement explains that GW University policies forbid "unlawful discrimination," and notes that the Association of American Law Schools and the National Association for Law Placement also prohibit discrimination against gays, lesbians and bisexuals.

The carefully worded statement avoids any open condemnation of the military policy, opting instead for a non-endorsement: "The presence of this [military] employer at the George Washington University should in no way be construed as an endorsement of this employer's practice of discrimination."

The relatively modest statement represents the culmination of the concerted efforts of members of Lambda Law, who in a meeting with Dean Friedenthal last month explained the apparent conflict between the University's anti-discrimination policy, and the policies represented by military recruiters at the school.

Louis Feuchtbaum



Prof. Roger Schechter

Despite the appeals from Lambda Law, Dean Friedenthal declined to unilaterally require the CDO to adopt a statement notifying students of the military's practice of discrimination, according to Lambda member Mark Glaze, 2L.

Lambda co-president Lou Feuchtbaum, 2L, who served in the navy, said that the Dean was concerned he might be risking some federal funding by undermining military recruitment. Feuchtbaum explained that federal law conditions various government subsidies to University's on their cooperation in military recruitment of students.

The Dean's rebuff notwithstanding, Lambda members brought their concerns to members of the faculty, including Professor Roger Schechter, who ultimately drafted the statement adopted by the faculty. Professor Schechter championed the issue before the faculty, and the statement received an overwhelmingly favorable vote, Feuchtbaum said.

Professor Schechter said that while some faculty members argued the statement was too tepid a challenge to the military policy, he considered it "a good initial step."

Commentary/ Law School News

REMEDY FROM PG 5

law suit is a very real possibility if those persons most concerned about discrimination by the military are dissatisfied by the very limited action our law faculty has just taken.

Clearly the ineffectual band-aid approach of placing a band-aid notice on our own materials would not shield us from legal liability, any more than placing an ineffectual band-aid notice concerning recruiting by the government of Iran -- and then actively cooperating with its anti-woman and anti-Jewish recruiting effects -- would shield us if it were known that this prospective employer likewise discriminated against protected classes.

In summary, as a law school, it would certainly seem to be appropriate for the law school to comply with the law, regardless of personal feelings about the issue of homosexuals in the military and the rights of our students to seek employment in the armed forces.

For those who have strong feelings about the military's discriminatory policies and wish to take a meaningful stand, the D.C. Human Rights Act provides a unassailable basis to ask the faculty to go far beyond what it has just done, or to initiate legal action to bring the law school into compliance with the letter and spirit of applicable law.

PUBLIC INTEREST FELLOWSHIPS AVAILABLE

By Prof. Joan Strand

Chair, Public Interest Subcommittee on the Shapiro Fellowship Program

The J.B. and Maurice C. Shapiro Public Service Fellowship Program provides for two or three students to be selected to serve as "J.B. and Maurice C. Shapiro Public Service Fellows" and receive awards of up to $10,000 per year in tuition remission. This fellowship program provides financial assistance to third year students doing part-time internships at non-profit public service organizations during the 1997-98 academic year. Applications are available now in the Career Development Office and must be returned by April 24, 1998.

To be eligible for this program, third year students must commit to work 20 hours per week for 12 weeks during both the fall and spring semesters. The non-profit public interest organizations where students arrange to work must be located in the D.C. area. Preference will be given to applicants representing, directly or indirectly, indigent individuals or populations, interests that would not otherwise be adequately represented, and environmental organizations; however, all public interest work will be considered. Students are not permitted to receive any compensation from the public service employer.

Students selected for the Shapiro Public Service Fellowship Program will receive financial aid in the form of credit against tuition for their third year of law school. Half of the annual award amount will be provisionally credited against tuition at the beginning of each semester, and will be converted into a final credit after the public interest employer certifies that the required work was completed. Shapiro Fellows also may receive academic credit for their work through the Outside Placement Program (Law 633).

To apply for the Shapiro Public Service Fellowship, students must make arrangements with a public service employer and submit an Employer Commitment Letter (contained in the application packet) with their completed application. As financial need is a factor in the award of these Fellowships, students must provide financial information if they do not have a current financial profile on file in the G.W. Law School Financial Aid Office.

The J.B. and Maurice C. Shapiro Public Service Fellowship Program seeks to provide students with the opportunity to perform legal work for public interest organizations by providing compensation for such work. A program description and application packet are available at the CDO. Completed applications (including Employer Commitment Letter and financial profile information) must be submitted to the Career Development Office by April 24, 1998.

Spleen

by Xene Xervenkah

In a long-standing tradition, the Law Review membership donned white robes and pointy hats and ... whoops, I'm mixing up my all-white groups again.

In a long-standing tradition, the Law Review membership donned black tie and evening gowns and headed out last Friday for the Law Review's annual spring formal. Affectionately called The Prom by insiders, the gala was held at Loew's L'Enfant Plaza, which is somewhere in Southeast.

This year's Prom, organized by 3L co-chairs Nathan Gindi and Susy Schwartz, was eagerly anticipated by many of the Law School's top ten percent. Rumor had it the Gindist was planning the dream Bar Mitzvah he never had, so the employed crowd flocked to see the schmaltz. They weren't disappointed. The extravaganza had a Casino Night theme, replete with roulette, blackjack and craps tables manned by real live professional dealers imported from New Jersey. There were also complementary 75 cent cigars, which all the chicks were smoking.

Eager to avoid the overcrowding that at time afflicts us during school hours, Gindi and Schwartz rented a three-room compound that was perhaps four times as large as the entire Law School in order to accommodate the 200 or so brainy revelers and their "dates."

The dance hall featured a really hip, sweaty, fat DJ sporting a fashionably tight tuxedo. Armed with a cache of '70s hit compilations direct from those late-night VH-1 ads, "DJ Bernie" -- allegedly Susy Schwartz' celebrity uncle from Long Island -- kept the crowd bumpin' and grindin' until precisely 1:59 a.m. Mounds of glistening velveeta and bologna were heaped onto trays to fortify the hungry dancers.

A wandering magician lent a note of pathos to the occasion as he made twenty dollar bills "disappear" while cackling ominously about impending student loan obligations.

Several of the younger members of the faculty attended the event, mostly because of the free booze. 2L Jeffrey Wadsworth, in his first official act as the Law Review's new editor-in-chief, saw to it that they didn't get carded. Professor Jon Siegel, 24, was overheard proclaiming that his seven and seven was "so damn good, that bartender's heading for a Rule 11 sanction." Prof. Jeffrey Rosen, 22, exclaimed quizzically "you mean I can have Coke with rum in it?" The newest bright young faculty member in attendance, Prof. Renee Lettow, 19, said that she hadn't imbibed so heavily since her soggy Oxford days.

Prof. Selmi, who graced last year's fete as well, was invited back on the condition that he actually wear a tie this year. "This is a dignified event," one editorial staffer sniffed. "I mean, show some respect." Prof. Ira "Chip" Lupu, who is not a young member of the faculty, was seen hovering menacingly by the gaming tables most of the evening.

The already woozy crowd choked back salty sentimental tears at the end of the night, when outgoing editor-in-chief Bryan Corbett dedicated the last song, "Lover Lay Down" by the Dave Matthews Band, to his girlfriend, Kaija Clark. Ms. Clark, a 3L, recently had her Note published in the Law Review. I'm sure it's really good.

Review

LAW REVUE XX: THE EMPIRE STRIKES JACK

by:John Doe III,
Special to the Nota Bene

The Twentieth Anniversary production of the Law Revue Show was like the Broadway musical Cats - amazing costumes, extreme energy, and too long of a run. It did, however, make us laugh and make us cry - albeit as we were laughing at the misfortune of those who were mocked.

The Show got off to a rousing start with the entire cast exclaiming that "We're better than American!" sung to the tune of Neil Diamond's "Coming to America." The show continued with the usual montage of skits and songs poking fun at everything from professors' teaching styles to students' study habits. Many of the "old familiar" subjects were back for repeat performances this year, including a plethora of comments about Professor Geltman (enough said), the plight of first years, and the pathetic nature of the non-Law Review publications at the school. New topics of abuse included Nathan Gindi as a candidate for Dean and a mafia run financial aid office.

This year's Show marked the end of Dean Friedenthal's run as head of the law school, and as a result several skits and songs focused on our illustrious Dean and his infamous personality. In fact, during the X-Files skit, the infamous "head" lowered from the ceiling with a new feature -- glowing red eyes!

In conclusion, this tired writer was quite impressed with the talent exhibited (or should I say exhibitionist) on stage. It was obvious that the performers in the cast, the band, and the stage crew put in long hours in order to make the show such a success. Following conversations with Joey Coleman (Co-Director/Producer), Steve Colon (skit director), and Ramon Varela (drummer), it's obvious that several members of the cast have the grades which prove their dedication. Look forward to seeing you in summer school boys!

Nota Bene

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Nota Bene is published bi-weekly by the students of The George Washington University Law School. Its office is located in the basement at 2008 G street, Washington D.C. N.W., 20052, (202) 676-3879.

Views expressed herein do not necessarily reflect the views of The George Washington University Law School or *Nota Bene*. Editorials represent the views of a majority of the Editorial Board. Opinion columns are reflective of the views of the column's author(s). In articles, the source of information is identified, and an attempt is made to present a balanced view. In letters, the veracity of statements is strictly the responsibility of the author(s).

Nota Bene will consider for publication all articles, letters, announcements, cartoons or opinion pieces submitted by 5:00 p.m. on the Wednesday before publication. **All contributions must be submitted in WordPerfect, on a diskette,** which will be returned approximately one week after publication. Letters should be no longer than 500 words and other submissions should be no longer than 1000 words. *Nota Bene* strives to treat all submissions in a fair and uniform manner. However, due to space constraints, submissions may be omitted and *Nota Bene* will make reasonable efforts to print them in a later issue. Its editorial policies are available for inspection by any person during normal business hours.

FROM THE IMMIGRATION CLINIC....

By Prof. Alberto Manuel Benítez

I will be hiring one research assistant for the summer of 1998. Pay is at the standard rate, and the hours are flexible. I expect the assistant to start work on June 1. Duties will include, but will not be limited to, serving as co-counsel on my cases, legal research and writing for an article-in-progress, and some administrative tasks. Preference will be given to applicants who have completed Immigration Law 538 or its equivalent at another law school.

If you are interested in this position, please leave your cover letter and résumé in my Clinic mailbox, 2000 G St., 2nd floor, no later than April 20. I will try to have the assistant selected no later than May 1.

Commentary

A Half-Way Remedy

by GWULS Professor John Banzhaf

Recently some people at the law school who were concerned about the refusal of the military to induct openly homosexual soldiers proposed a remedy. It was to add a notice to law-school-produced material about recruiting by the military.

The notice, which the faculty voted to require, reminds law students that the University does not necessarily endorse the military's policy simply because we assist the military to recruit at the law school. It also notes University policy prohibits "illegal discrimination" — an irrelevant statement since the military's policy is not (at this time at least) illegal.

Perhaps because very little legal research was conducted before the proposal was presented, it was only a half-way measure which is unlikely to have any real effect. In a sense, to paraphrase an old slogan, all we did was throw words at the problem. They are also rather ineffectual words, since students interested in military careers already know of their prospective employer's policy regarding homosexuals, and are unlikely to be affected by our newly required notice.

In addition, current law not only permits but requires the law school to do far more than we did with regard to military recruiting on campus. This means that the step we took was largely symbolic, and that the law school remains open to the filing of a *complaint or law suit against it over its current policy of active cooperation* with military recruiters. Here's why.

DC LAW

The D.C. Human Rights Act prohibits discrimination on the basis of sexual orientation by employers. It also provides that "it shall be an unlawful discriminatory practice for any person to aid, abet, invite . . the doing of any of the acts forbidden under the provisions of this act." [Sec. 1-2526]

The law defines aiding and abetting so broadly that it "comprehends ALL ASSISTANCE rendered by words, acts, encouragement, support, or presence, actual or constructive, to render assistance if necessary," [Black's Law Dictionary 68 (6th ed. 1990), capitalization added]

Although I know of no authoritative construction of this section within the District, I have succeeded in two complaints I filed under it which gave it a very broad interpretation.

In one, I argued that a D.C. newspaper which published ads for a Virginia night club which has a "Ladies Night" was "aiding and abetting" sex discrimination, even though the practice was apparently legal in the state in which it occurred. Although the newspaper was represented by a well-known First Amendment attorney, the newspaper settled the matter and even made a payment to our law school's women's rights organization in lieu of paying me attorney fees.

In another situation I filed a complaint against a dance class in Maryland which allegedly discriminated on the basis of race and religion. To obtain jurisdiction in the District, I argued that the parents of children attending the school who lived in the District "aided and abetted" the discrimination by "steering" new recruits to the classes and by serving on various boards, etc. With Prof. Butler's assistance, the respondent school settled rather than fight on jurisdictional or other grounds.

Thus it appears that a reasonable construction of "aid or abet" would prohibit the law school from running notices of military recruiting, collecting resumes of applicants, providing and scheduling interview rooms for such recruiting, and otherwise actively cooperating in an effort to discriminate on the basis of sexual orientation by assisting in the recruiting of heterosexual but not homosexual law students.

Moreover, I have no doubt that if the law school were approached by a prospective employer which refused to hire women or Jews (e.g., Iran), we would not cooperate in the many ways we now cooperate with military recruiters. In other words, we are aiding and abetting the military in seeking to hire law students in a discriminatory manner which we would never do with regard to other prospective employers which likewise discriminate.

FEDERAL LAW

The D.C. Human *Rights Act provides that "nothing in this act shall be construed* to supersede any federal rule, regulation or act." [Sec. 1-2503(c)] Therefore, except to the extent that the DC law's prohibition on aiding or abetting discrimination is superseded by federal law, it remains in full force and effect.

The Solomon Amendment [Title II, §206(a)] in no way supersedes D.C. law. It provides only that an institution of higher learning may not receive grants if it "has a policy of denying, or which effective prevents, the Secretary of Defense or the Secretary of Transportation from obtaining for military recruiting purposes -- (A) entry to campuses or access to students on campuses; or (B) access to directory information pertaining to students."

The operative words are "denying or . . . effectively prevents." The drafters deliberately did not use words like "impede," "obstruct," "hinder," "thwart," "inhibit," "frustrate," etc.; i.e., words which would indicate a broad and flexible prohibition on the adverse actions schools might take aimed at military recruiters.

Moreover, the statute certainly does not require or even suggest that military recruiters must be treated or accommodated in substantially the same way that other recruiters are. In short, unless the law school denies or effectively prevents military recruiters "entry to campus or access to students," it is in full compliance with the Solomon Amendment, and the prohibitions in the D.C Human Rights Act apply with full force.

ANALYSIS

Refusing to actively cooperate with military recruiters -- e.g., by not collecting law student resumes, not assisting in scheduling interviews, not posting law school notices of their availability, etc. -- does not deny or effectively prevent military recruiters access to our campus or our students.

Military representatives are obviously free to come upon our campus and into our law school buildings to talk with students. Law students presumably may have a quiet conversation with them in open areas of law school building. They may also go into empty classrooms when additional privacy is required, as many of our study groups regularly do. Those students most likely to be sought out -- e.g., members of our Law Review and other journals -- presumably have access to offices where meetings can be held, as do many other students who are members of organizations ranging from the SBA to Note Bene.

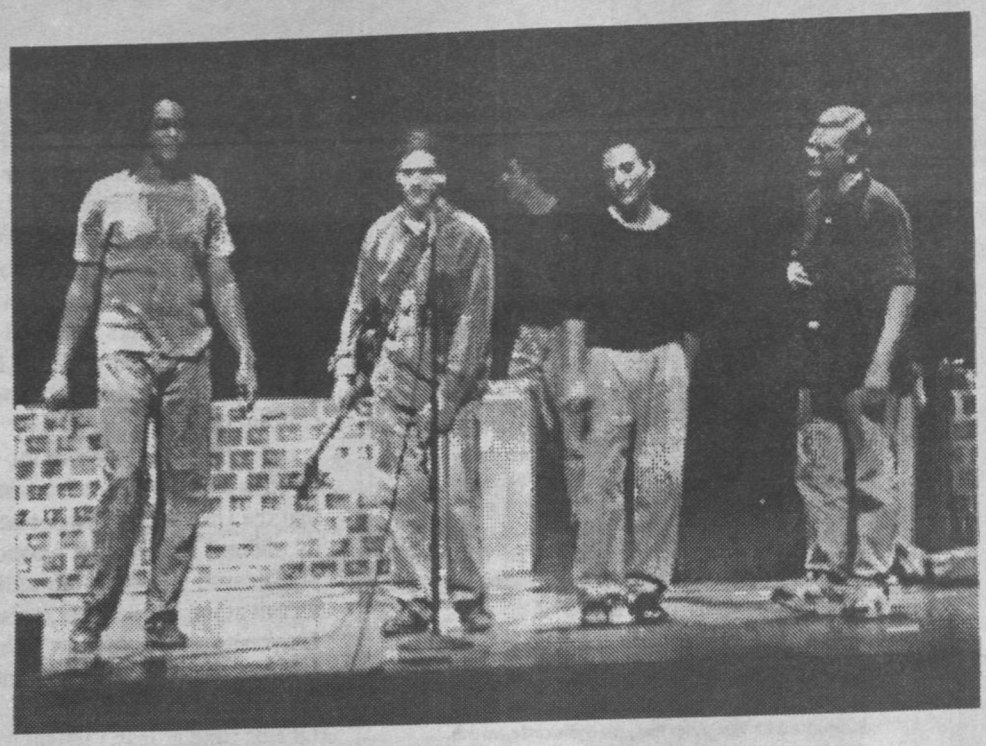
There are also many ways in which military recruiters *may advertise their presence* on campus. These include ads in The Hatchet or Note Bene, ads in magazines targeted to law students, an internet web site, the posting of notices on bulletin boards, etc. Thus refusal by the law school to actively assist in publicizing visits by military recruiters and in scheduling interviews on law school property can hardly be said to prevent or deny them access to our students.

CONCLUSION

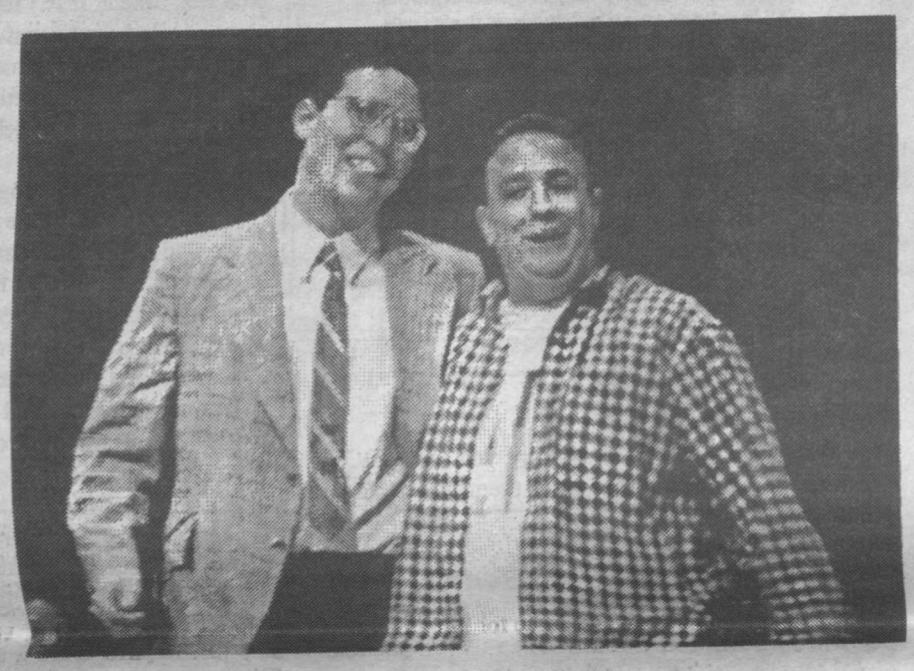
Failure to fully comply with the language and intent of the D.C. Human Rights Act -- which mandates that entities in the District must not cooperate in any way with those who engage in discriminatory hiring practices -- leaves the law school open to the filing of a complaint or law suit attacking our practice of active cooperation. Either would be highly embarrassing, and probably quite expensive (since attorneys fees are recoverable), and could name those in the Administration and our Career Development Office who actively participate as individual respondents or defendants (a technique I have used successfully in other complaints under the DC Human Rights Act).

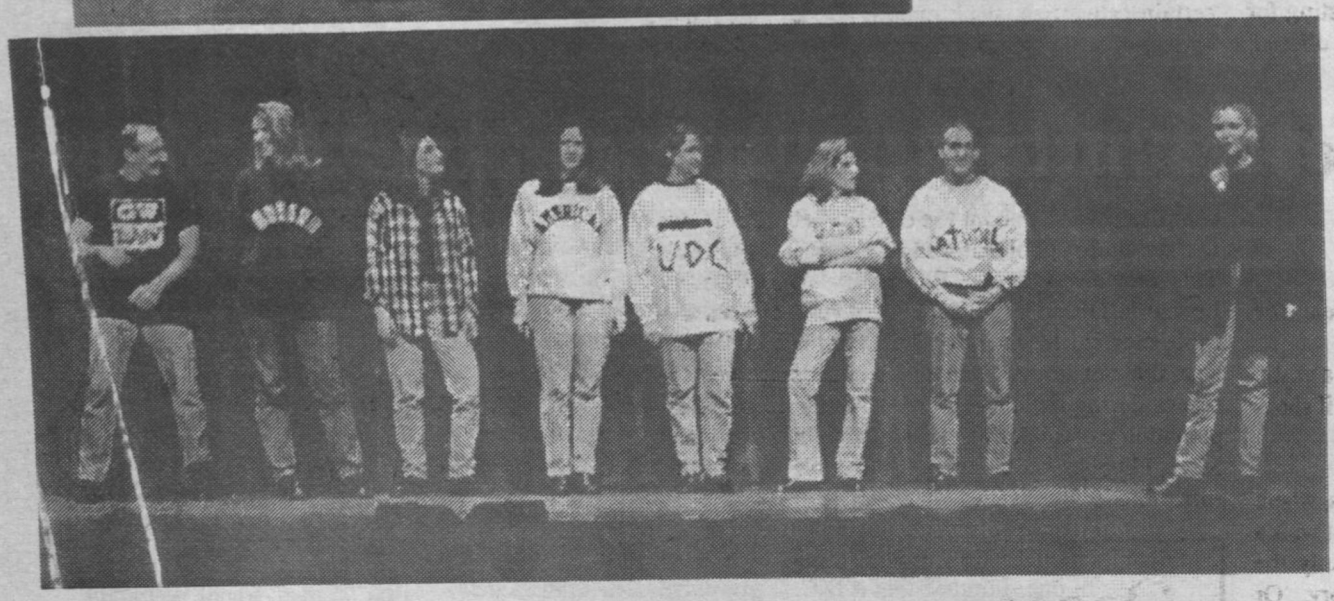
Since an agency complaint can be filed by any person regardless of sexual orientation, and since several members of the law school community are open about their status as homosexuals, a complaint or

See Remedy pg 4



Law Revue XX: The Empire Strikes Jack





FEATURES

"Getting Reconnected"

Life on the Web

by
Andrea Chempinski
Features Editor

With May just around the corner and graduates heading off to the far corners of the country, people are going to be faced with the task of setting up new email services and moving webpages around to new locations. This can seem like a daunting task, after all there are hundreds of dial-up companies and quite a few freebies, it's tough to know which to pick or where to look. Always remember to look beyond the big name servers like AOL and Compuserve as you can find better, faster and cheaper providers with just a little looking. So here's this month's column, a tool to help you figure out where to find your new home on the 'Net.

Type One: Getting Back on the 'Net:

The first step to getting a new email system set up is to find a new provider who can give you email and possible web page capability. Remember to look into these services before you leave DC, as you need a connection to get to them to search your new home.

The List
http://www.thelist.com/

The number one resource for picking a new provider - *remember this url! The List is a phenomenal* service that keeps track of all the dial up companies around the world. The massive directory is searchable by both location and area code. Area code is usually the best way to search as that will help determine what will be a local call for you in your new location. Within each category is an initial list of the providers names and area codes serviced. Clicking on a listing will bring up a more detailed listing for that provider with types of accounts, services offered, prices and technical notes. Some of the information can be a bit overwhelming if you're not into all the technical 'Net jargon but don't let it get to you. I've personally used The List each time I've moved and it is an invaluable resource for finding little mentioned, but excellent providers.

Juno
http://www.juno.com/

Juno was one of the first companies to offer totally free email, including a dialin number. The software used is simple, and free by either downloading from their website or calling their number to request a disk mailed to you. Juno's a basic setup that allows email only (no web access) but for email it works reasonably well. The program automatically picks the local number for you (Juno has hundreds of dialins) and if there isn't a local one, automatically picks the 1-800 line. Email is downloaded straight to your hard drive, and Juno remains free by having advertisers pay to have their banner used in the program. While a bit obnoxious, the banner is relatively out of the way and doesn't detract all that much from the system use. The nicest thing about Juno is the ability to use it all over the country without doing anything more complex than entering a new "calling from" number and having it pick a new dialin for you. Nice for people who travel a lot.

Type Two: Using a pre-existing connection

This type is designed for people with access to Netscape or Explorer from their office, library or even friends house. Many places offer free email and/or webpages but no dialins, so they are usable only if you can get on the net somehow in the first place.

Email Addresses
Yahoo! - http://www.yahoo.com
Hotmail - http://www.hotmail.com
Excite - http://www.excite.com/

These three services are the biggest, and best of the free email systems. Very straightforward to use, *they just require picking a username, password and* filling out a quick registration form and you're all set. Email is then accessed and read using Netscape or Explorer, and can be deleted or saved into folders after reading. Both Yahoo! and Excite! go one step further by allowing an additional customization to set up your own "news" webpage. By picking certain criteria it sets up a system that scans for news articles in certain categories, stock quotes, sports scores and a variety of other things. These work especially well if you want to keep up on news from your hometown without wading through out of town newspapers or full news services. It's really a matter of personal preference as to which you choose, I've used all three at various times and there's not that much difference between them when you get right down to it.

WebPages & Email
Geocites - http://www.geocities.com
Tripod - http://www.tripod.com/
Xoom - http://www.xoom.com/
Fortunecity - http://www.fortunecity.com/
Angelfire - http://www.angelfire.com/

Free webspace has taken giant leaps forward in the past year. New services are cropping up all over the place offering just about everything. From free email, more megs of storage, chats, guestbooks and a host of other stuff. Each system operates in the same way by having you register for a login name and then picking a "neighborhood" of where to put your page based on what you have on it. (Example: Geocities TelevisionCity neighborhood is for pages about tv shows or actors). Depending on which site you choose, you get a varying number of megs to use, ranging from three to twelve. Both Tripod and Geocities also offer the option of purchasing additional space at reasonable prices (Tripod gives you 10 megs for $3 per month). Again each system operates in relatively the same way, with the only difference is in dealing with file management and uploading. Some provide ftp addresses to use and others use the "click and drag" method. It's all a matter of preference as to which you choose. Personally, the hardest part about using any of them occurs only if you use more than one at once and trying to keep your usernames and passwords straight. I currently have pages on all but Angelfire, and really rate them all the same, though I might give Geocities a slight edge because they've been around the longest and have a few more options available than the others.

Do you have a web page that you think others would find interesting? Or did you just stumble across something so strange it just had to be shared? Either way feel free to drop me a line at hoo@hooloovoo.com and give me your suggestions for future columns. And heck if you really have that much time to kill surf on over to my page at http://www.hooloovoo.com/

Sex, Sleaze and Kevin's Bacon

By Travis Skaggs
staff writer

U.S. Marshals

Don't waste your money. Just go rent *The Fugitive* instead. It's superior in every

conceivable way. Except Irene Jacob is a vastly superior "love interest" than Sela Ward, even if she is vastly underused. Grade: C

Wild Things

You remember those high school days, where the sexual tension was so thick you could cut it with a pretty good fork. You don't? Well, apparently the people behind this film have a better memory. Or they just had a better high school. In this case, Matt Dillon is a sexy guidance counselor (now everyone raise your hands who had a guidance counselor who resembled Matt Dillon. I didn't think so), who sleeps with everyone, including his students. So, it's your basic afterschool special.

In the grand tradition of *Showgirls*, this film is so bad and trashy people should be encouraged, nay, forced to see it. Cheerleaders performing routines in skimpy clothing, a seductive car washing scene (in slow motion!), a *menage a trois*, and KEVIN BACON'S PENIS!!!! Talk about your six degrees. This movie is a dirty old man's wet dream.

The script is simply atrocious. Double entendres abound. The acting is terrible. Part of the fun is determining which actress, Neve Campbell or Denise Richards (from *Starship Troopers*), has the better agent (who has the no nudity clause). Oh, I completely forgot about the catfight between the two in a swimming pool that leads into a steamy interlude. This movie has it all. Except for explosions and Leonardo DiCaprio. There are double-crosses and triple-crosses. Plot twists galore, though only the one near the end is even remotely a surprise. Even the scenes during the closing credits that give some explanation are wonderfully silly. If you like sleazy (and Steve, I know you like sleazy), run, don't walk, to this film. Grade: B-

Oscar Winners!!

After sifting through the voluminous entries (a grand total of 9, that's right NINE), the final result was a tie between Jahna Hartwig and Andy Weinstein. Yes, I said that there would be a random selection for the winner, but Ms. Hartwig politely declined the award, wishing only to be recognized as a co-winner. So, Andy gets the wide screen edition of *Cutthroat Island*, the Reny Harlin, Geena Davis, Matthew Modine masterpiece. Enjoy, Andy. You've earned it.

SPORTS AND THE LAW

Seventy-Five Years and Still Standing:

Major League Baseball's Antitrust Exemption Remains the Greatest Legal Enigma in the History of Professional Sports

By: Dennis W. Bishop, Esq. & Bret M. Kanis, Esq.

This May 29th, Major League Baseball (MLB) will celebrate perhaps the most significant event in the modern era of professional baseball. That date marks the seventy-sixth anniversary of the U.S. Supreme Court's landmark decision in *Federal Baseball Club of Baltimore, Inc. v. National League of Professional Baseball Clubs* that MLB is not subject to federal antitrust scrutiny. Unlike the fiftieth anniversary of Jackie Robinson's historic breaking of the color barrier in MLB last year, though, there is unlikely to be any commemorative ceremony or other fanfare this season. Nonetheless, the impact of the Supreme Court's historic albeit flawed ruling on baseball, from a legal standpoint, is undeniable.

Although MLB's exemption from liability under the federal antitrust laws finds its genesis in the *Federal Baseball* case, the exemption actually evolved through a trilogy of Supreme Court cases spanning half a decade. Building on its 1922 decision in *Federal Baseball*, the Supreme Court continued to develop MLB's exemption in both the 1953 case of *Toolson v. New York Yankees* and the 1972 case of *Flood v. Kuhn*.

Writing for a unanimous Supreme Court in *Federal Baseball*, the now legendary Justice Oliver Wendell Holmes opined that the business of giving baseball exhibitions for profit does not constitute trade or commerce within the meaning of the Sherman Antitrust Act. In order to fall within the purview of Section 1 or 2 of Sherman Act, the primary federal antitrust provisions relevant to professional sports, the agreement or conduct at issue must be "in restraint of trade or commerce among the several States, or with foreign nations." Finding that exhibitions of baseball games "are purely state affairs," Holmes reasoned that the Act does not apply to MLB.

The *Federal Baseball* case came about as the result of the dissolution of the Federal League of Professional Baseball Clubs in 1915 pursuant to an agreement with the National League and American League of Professional Baseball, the predecessors to today's National and American Leagues in MLB. Owing to the disbanding of the Federal League, Federal Baseball of Baltimore, Inc., a former Federal League franchise owner and plaintiff in the case, found itself with a team but without a league in which to play. Accordingly, the Baltimore franchise brought suit against the National and American Leagues alleging conduct violative of the Sherman Act.

Federal Baseball's challenge focused on the anticompetitive impact of the reserve clause contained in the yearly employment contracts of National and American League players. One of the key features of the reserve clause was the renewal provision. This provision of the now-extinct reserve clause gave the team the option of renewing a player's contract with the same provisions as the expired contract (including the reserve clause) except for the player's salary. Although the player's salary was negotiable, if the parties could not mutually agree upon the player's salary, the team had the right to unilaterally determine it.

Other key features of the reserve system were the entry draft and other clauses that confined a player to the team to which he was under contract and allowed a player to be assigned without the player's permission. Under the reserve system, the player had only two options at the expiration of his yearly contract: (1) the player could enter into a new contract with the same team for the succeeding year; or (2) by failing to resign, the player would be considered ineligible by the National and American Leagues to serve any baseball club.

Accordingly, the reserve clause effectively bound a player to remain with the same team that originally drafted him until the team decided it did not want to renew the player's contract or until the player's contract was assigned to another team (i.e. the player was traded). Because of this restrictive provision, the Federal League franchises such as that operated by Federal Baseball of Baltimore were unable to obtain the services of players who had contracts with the National or American Leagues. Nevertheless, following *Federal Baseball*, the reserve system was clearly established as falling within the scope of the MLB antitrust exemption.

When the Supreme Court revisited the MLB antitrust exemption in the 1953 case of *Toolson v. New York Yankees*, the reserve system once again found itself at the core of the controversy. The plaintiffs in the underlying cases which lead to the Supreme Court showdown were professional baseball players who alleged that they had been damaged by virtue of the player mobility restraints contained in the reserve clause. In an effort to circumvent *stare decisis*, the *Toolson* plaintiffs argued that the *Federal Baseball* decision was antiquated due to the increased revenue then being generated by baseball as a result of interstate radio and television broadcasts.

The Supreme Court was unpersuaded by the *Toolson* plaintiffs, upholding *Federal Baseball* "so far as that decision determines that Congress had no intention of including the business of baseball within the scope of the federal antitrust laws." The court further noted that in order for baseball to be subjected to antitrust laws, legislation to that effect would need to be enacted.

Flood v. Kuhn, the final case in the Supreme Court trilogy of MLB antitrust exemption cases, once again involved a player, Curt Flood, challenging the reserve clause in his employment contract and the reserve system in general. In accordance with the reserve system, the St. Louis Cardinals assigned Flood's contract to the Philadelphia Phillies after the 1969 season when the two sides could not agree upon a salary for the 1970 season. Flood, however, wanted to remain in St. Louis as he had played there for twelve seasons and did not want to leave his friends and teammates. Accordingly, Flood petitioned Bowie Kuhn, the Commissioner of baseball at the time, to declare him a free agent. Kuhn refused. Flood then challenged the legality of the reserve system by filing an antitrust suit against the Commissioner, the two major leagues and all twenty-four major league clubs.

In the resulting case of *Flood v. Kuhn*, the U.S. Supreme Court upheld the legality of baseball's reserve system finding that the system was immune from antitrust scrutiny. It is significant, however, that for the first time, the Supreme Court in *Flood*, realizing the blunder made in *Federal Baseball* and *Toolson*, acknowledged that the exemption was an "aberration confined to baseball." Although the Court finally recognized that professional baseball is a business involved in interstate commerce, the Court still felt bound by the doctrine of *stare decisis*. Therefore, consistent with previous Supreme Court decisions to the effect that the business of baseball does not involve interstate commerce, the reserve system was again found to be exempt from the world of federal antitrust.

Although the Supreme Court has been very clear in establishing that the MLB antitrust exemption applies to the reserve clause, it has failed to expand on the list of covered subjects or to carve out exceptions. The United States District Court for the Eastern District of Pennsylvania, in its 1993 decision *Piazza v. Major League Baseball*, examined the antitrust trilogy of Supreme Court cases in conjunction with a survey of lower court cases to conclude that "the following list of activities or markets that are not within the exempted market can be generated: (1) the movement of players and their equipment from game to game; (2) the broadcast of baseball games; and, perhaps, (3) employment relations between organized professional baseball and non-players." It is also well-established that the antitrust exemption applies to the minor leagues in that a team, for player development purposes, can bind a player for five years.

For the time being, MLB seems destined to proceed under the Supreme Court's limited direction as modified by a wide array of lower decisions which vacillate between broad and narrow interpretations. The United States Court of Appeals for the Seventh and Eleventh Circuits have opined that the "Supreme Court intended to exempt the business of baseball, not any particular facet of that business, from the federal antitrust laws" and that the exemption extends to franchise relocation. By contrast, the Florida Supreme Court, in the 1994 case of *Butterworth v. National League* concluded that baseball's antitrust exemption extends only to the reserve system.

Some legal observers believe that the New York Yankees' pending antitrust case against MLB may finally establish more definitive parameters of the antitrust exemption. With controversial owner George Steinbrenner leading the charge, the Yankees seek not to overturn the exemption, but rather to limit it. The Yankees' suit stems from the other MLB franchise owners' efforts to block Steinbrenner's $95 million merchandising contract with adidas. If the Yankees prevail, MLB would be prohibited from negotiating exclusive contracts to sell merchandise with major league trademarks, as is currently the practice of MLB.

Even if the Steinbrenner challenge fails to limit baseball's antitrust exemption, the exemption still faces reform efforts from Congress. Just last year, two new bills were introduced with the goal being to repeal MLB's judicially-created exemption. Senator Orrin Hatch's (R-Utah) "Curt Flood Act of 1997" would repeal the exemption making exceptions for minor league issues, franchise relocation and sports broadcasting. Representative Jim Bunning's (R-Kentucky) "Major League Baseball Antitrust Reform Act of 1997" largely mirrors the terms of Hatch's proposed legislation.

Perhaps the wild card in the MLB antitrust situation is a little-noticed clause in the collective bargaining agreement signed between MLB and the Major League Baseball Players' Association in March of 1996. That provision commits the owners to negotiate a partial end to the antitrust exemption that baseball won in 1922. However, even if the players and owners agree to new language, it is likely that the courts will still play a critical role in actually determining which parts of the exemption survive. This reality that the courts will likely be the ultimate arbiter is somewhat troubling, though. While there is little question that repealing or limiting baseball's antitrust exemption would make the owners more accountable for their actions and subject to an appeal process via the courts, there remains a real issue as to whether the courts are best-suited to oversee the business of baseball. The antitrust courts have historically failed to understand the need for mechanisms such as salary caps in professional sports to preserve competitive parity and to ensure the efficient operation of the league.

Many commentators feel that court involvement will do nothing but make a number of antitrust lawyers rich. Perhaps the only true solution is for the players and owners to recognize their mutual self-interest in fixing baseballs' problems and then to stop posturing and positioning in favor of finding a real solution mindful of what the game is really supposed to be about--the fans.

"Sports and the Law" is a bi-weekly commentary on recent events in the fast-paced world of business behind the professional, college and amateur sports scenes, written from the lawyer's perspective.